

Memo

From: Terry Whiteside
To: Montana Wheat & Barley Committee
Date: January 28, 2008
Re: **Transportation Report**

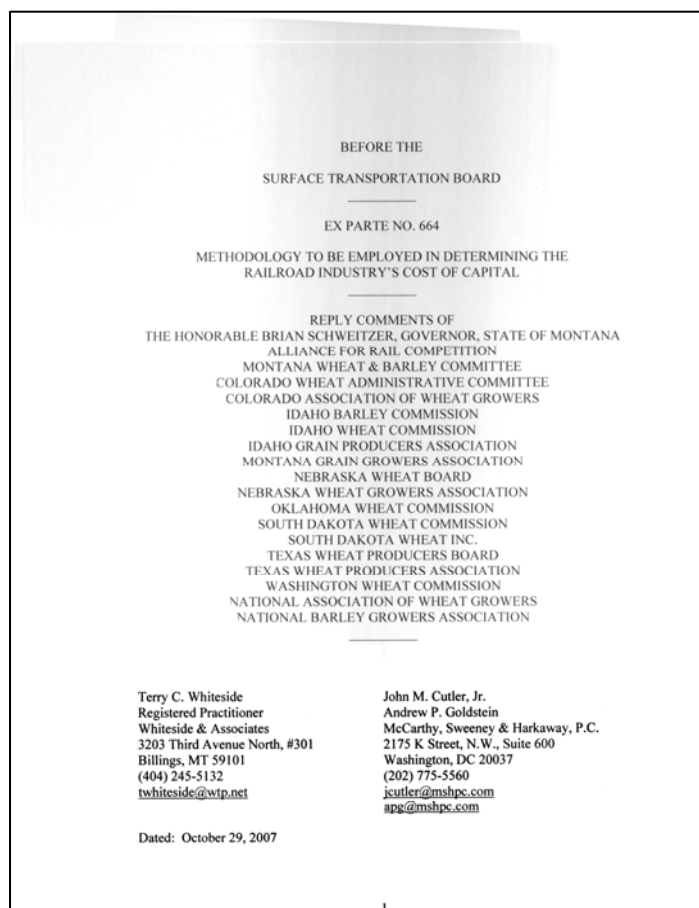


STB ISSUES FINDINGS ON EX PARTE NO. 664 COST OF CAPITAL – A VICTORY FOR SHIPPERS

The STB issued its long anticipated decision on Railroad Cost of Capital. The rail shippers in the United States have long been striving to get the STB to abandon their meaningless Discounted Cash flow methodology to calculate Cost of Capital. The importance of this proceeding cannot be underestimated. The Cost of Capital calculations have been utilized by the STB to ascertain whether the railroads are 'revenue adequate'. Remember, if the STB finds railroad revenue inadequate – then it mandates that the railroad can charge higher rates to captive shippers (called differential pricing) to help make up revenues shortfalls. The STB has been using a methodology that was outdated 25 years ago. The Alliance for Rail Competition in 1997 through the expertise of Dr. Alfred Kahn suggested that the Board move to a Capital Asset Pricing Methodology (CAPM) and it has finally done it. Dr. Alfred Kahn considered the Discounted Cash Flow as 'meaningless' producing results that were also meaningless.

The Western Coal Traffic League followed the ARC lead and two years ago, filed a petition with the Board to move to CAPM. The heightened focus of Congress on the activities of the Board further contributed to the finalization of this decision. The Alliance for Rail Competition and many agricultural groups can share in this victory as they participated in this proceeding from the beginning recognizing the importance of this proceeding on future rail rates. Participants in Ex Parte 664 included the Honorable Brian Schweitzer, Governor of the State of Montana, Montana Wheat and Barley Committee, Colorado Wheat Administrative Committee, Idaho Barley Commission, Idaho Wheat Commission, Idaho Grain Producers Association, Montana Grain Growers, Nebraska Wheat Board, Nebraska Wheat Growers Association, Oklahoma Wheat

Commission, South Dakota Wheat Commission, South Dakota Wheat Inc., Texas Wheat Producers Board, Texas Wheat Producers Association, Washington Wheat Commission National Association of Wheat Growers and National Barley Growers Association.



The Board has determined to replace its 25 year old, much criticized formula for determining the railroad cost of capital with a much more widely used and accepted methodology known as the Capital Asset Pricing Model (CAPM). The CAPM is utilized by the Federal Energy Regulatory Commission (FERC), the Federal Reserve and many other regulatory agencies.

According to Pete Pfohl of Slover and Loftus, counsel for the Western Coal Traffic League, this new methodology is expected to reduce the STB's final "cost of capital" determination for 2006, which is expected in about two months, from the 13.8% proposed by the Association of American Railroads to the 10% range. **This more accurate calculation of cost**

of capital not only will provide a more accurate picture of the "revenue adequacy" of the major railroads (several are likely to be viewed as "revenue adequate"), but also will ensure that a more accurate cost of capital is used in rate challenge cases, with the possible result that, for the first time since 2001, rail customers may be able to win some of these challenges.

Editor's Note: The STB has complimented itself with the issuance of this proceeding for its very active agenda. Be mindful however, that this is the first action the STB has taken in recent years that actually may assist rail customers to win relief from monopoly pricing at the STB. The jury is still out on whether the changes to the "small shipment" procedures (Ex Parte No. 646 Sub 1) which the railroads are fighting tooth and nail, will work for rail customers. It would not be surprising to see the nation's railroads file an appeal challenging this decision. While the railroads are continually try to court captive shippers with gentle rhetoric, they are fighting every advancement at the STB by shippers such small rate case rules - virtually every decision at the STB that helps

captive shippers obtain protection from possible abuse by market dominant railroads which was a basic tenant of the Staggers Rail Act of 1980 is being opposed vehemently by the nation's railroads.

RAILROAD INDUSTRY TAKES AIM AT FORTHCOMING ECONOMIC STIMULUS PACKAGE

The major railroad industry has seized on the forthcoming economic stimulus package as a possible vehicle for an Investment Tax Credit - of up to 50%- for railroad infrastructure investment. Rail shippers must be vigilant on this issue and remind Members of Congress that no financial incentive should be provided to the rail industry until the problems of captive rail customers are addressed and resolved. An article on the AAR initiative follows:

"Rails Push Tax Credit as Stimulus
1/17/2008
Ari Natter
Associate Editor
Traffic World

The American Association of Railroads is "hopeful" that a tax credit for the construction of railroad infrastructure will be included in an economic stimulus package being crafted on Capitol Hill, according to association president, Edward R. Hamberger.

"Our guys have a list of projects ready to go," Hamberger said.

Congressional Democrats and Republicans are attempting to put aside their differences to quickly craft legislation that will stimulate the economy and head off recession concerns.

One proposal would provide a 50 percent tax credit to railroads, shippers and others that build rail and related infrastructure.

Shortline railroads also hope a similar tax credit will be included in an economic stimulus package."

SHIPPERS WEIGH IN ON EX PARTE 385 SUB NO. 6 – WAYBILL SAMPLES – OPEN UP THE PROCESS – MAKE FUEL SURCHARGE COLLECTIONS TRANSPARENT

The Governor of Montana, Brian Schweitzer and 17 groups* filed a petition with the STB requesting that the Board order the railroads to report their fuel surcharges separately in order to provide transparency for shippers analyzing the waybill samples. Two of the nation's railroads had been reporting fuel as a separate item and while the other two majors had been burying the charges in miscellaneous charges. The STB recently ordered that it

was OK to report the fuel in miscellaneous charges. The shippers including the Governor reminded the STB that in Ex Parte 661, Fuel Surcharges found that the railroads were double collecting and ordered the railroads to cease over collecting and develop methodologies that would more closely reflect actual fuel utilized in a rail movement. One of the most important aspects is development of transparency about the amount of the fuel surcharge being collected in a specific move. Thus the Petition to the STB was filed to make sure transparency is available.

"The Waybill could be a useful tool for monitoring abuses, but this will not be the case if the Board allows or directs the railroads to report fuel surcharge revenue as a part of aggregate Freight Revenue with no breakout of the fuel surcharge components."

OFFICE OF THE GOVERNOR
STATE OF MONTANA

BRIAN SCHWEITZER
GOVERNOR

JOHN BULLING
LT. GOVERNOR

221274

January 14, 2008

Office of Proceedings
JAN 17 2008
Part of Public Record

Re: Ex Parte No. 385 (Sub-No. 6), Waybill Sample

Dear Ms. Quinlan:

I am writing to the Board to express my support, and that of my Administration and that of a number of Montana and other agricultural groups who asked to join me, for the NITL letter petition for reconsideration filed December 31, 2007 as to the STB "Clarification" issued December 17 in Docket No. 385 (Sub-No. 6). The supporting agricultural interests are listed on an attachment to this letter.

The Board may recall that I filed written comments and came to Washington to speak at the May 11, 2006 hearing on railroad fuel surcharges in Ex Parte No. 661, Rail Fuel Surcharges. Montana is the most rail captive state in the country, with some 95% of rail freight controlled by BNSF, and one of the concerns I expressed in my testimony in Ex Parte No. 661 was that "Montana would be paying MORE after a switch to mileage-based fuel surcharges," because "BNSF simply raised the underlying rates and then applied a slightly smaller mileage-based fuel surcharge than the revenue based fuel surcharge."

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TELEPHONE 406-444-3111 • FAX 406-444-5529 • WEBSITE WWW.MT.GOV


Anne K. Quinlan, Esq.
January 14, 2008
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In its January 26, 2007 decision in Ex Parte No. 661, the Board recognized the need for transparency as to rail surcharges, to permit shippers and others to assess whether railroad fuel surcharges recover more than the actual increased costs of fuel. Captive shippers are most vulnerable to such overcharges, and the exceptional captivity of Montana shippers makes fuel surcharges on our rail rates particularly vulnerable.

The Waybill Sample could be a useful tool for monitoring abuses, but this will not be the case if the Board allows or directs railroads to report fuel surcharge revenue as a part of aggregate Freight Revenue, with no breakout of the fuel surcharge components. As NITL's petition for reconsideration explains, the resulting loss of transparency is unnecessary, since railroads can report fuel surcharge revenue and other freight revenue separately on waybills.

I urge the Board to grant the NITL petition, reconsider the Clarification issued December 17 and provide the promised transparency as to fuel surcharge revenues.

Respectfully submitted,


BRIAN SCHWEITZER
Governor

cc: Counsel for NITL, NGFA,
BNSF and other Class I Railroads

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MONTANA WHEAT & BARLEY COMMITTEE
COLORADO WHEAT ADMINISTRATIVE COMMITTEE
COLORADO ASSOCIATION OF WHEAT GROWERS
IDAHO BARLEY COMMISSION
IDAHO WHEAT COMMISSION
IDAHO GRAIN PRODUCERS ASSOCIATION
MONTANA GRAIN GROWERS ASSOCIATION
NEBRASKA WHEAT BOARD
NEBRASKA WHEAT GROWERS ASSOCIATION
OKLAHOMA WHEAT COMMISSION
SOUTH DAKOTA WHEAT COMMISSION
SOUTH DAKOTA WHEAT INC.
TEXAS WHEAT PRODUCERS BOARD
TEXAS WHEAT PRODUCERS ASSOCIATION
WASHINGTON WHEAT COMMISSION
NATIONAL ASSOCIATION OF WHEAT GROWERS
NATIONAL BARLEY GROWERS ASSOCIATION

* Filing Group: Governor Brian Schweitzer, Montana Wheat & Barley Committee, Washington Wheat Commission, Idaho Wheat Commission, Idaho Barley Commission, Colorado Wheat Administrative Committee, Oklahoma Wheat Board, Nebraska Wheat Board, Texas Wheat Producers Association, South Dakota Wheat Commission, Montana Grain Growers Association, South Dakota Wheat Inc., Idaho Grain Producers Association, Texas Wheat Growers Board, Colorado Association of Wheat Growers, Nebraska Wheat Grower Association, National Association of Wheat Growers, and National Barley Growers Association